

DOCUMENT RESUME

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[Request for Reconsideration of Protest against Alleged Restriction of Competition]. B-186854. August 8, 1977. 3 pp.

Decision re: Boonton Electronics Corp.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: National Defense: Department of Defense - Procurement & Contracts (058).

Organization Concerned: Aul Instruments, Inc.; Department of the Navy: Navy Ships Parts Control Center, Mechanicsburg, PA.

Authority: 54 Comp. Gen. 1107. 45 Comp. Gen. 365. 45 Comp. Gen. 368. A.S.P.R. 3-801.

The protester requested reconsideration of a decision denying its contention that the brand name or equal specification in a request for proposals was unduly restrictive of competition. The prior decision finding that the procuring activity's determination of minimal needs was reasonable and was not unduly restrictive of competition was affirmed since it was not shown that the decision was based on errors of fact or law. (Author/SC)

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# DECISION



*Protest*  
*Proc. II*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-186854

DATE: August 8, 1977

MATTER OF: Boonton Electronics Corporation--Reconsideration

## DIGEST:

Prior decision finding that procuring activity's determination of minimal needs was reasonable and not unduly restrictive of competition is affirmed since it has not been shown that decision was based on errors of fact or law.

Boonton Electronics Corporation (Boonton) requests reconsideration of our decision in Aul Instruments, Inc.; Boonton Electronics Corporation, B-186854, June 29, 1977, 77-1 CPD 461, in which we denied its protest that the brand name or equal specification included in Request for Proposals (RFP) No. N00104-76-R-WM66, issued by the Navy Ships Parts Control Center (SPCC), was unduly restrictive of competition.

Boonton claimed that the specification was unduly restrictive because only the specified brand name product, the Hewlett-Packard HP 8640 signal generator, could meet the brand name or equal purchase description. Boonton further maintained that the Navy had not demonstrated that all the salient characteristics listed in the specification were required to meet all the Navy's intended applications for the generator.

We held, however, that contracting agencies are vested with considerable discretion in drafting specifications reflective of their minimum needs, and that although in many instances there was clear disagreement between the protester and the contracting activity, Boonton had not shown the requirements of the specification to be without a reasonable basis. We further held

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that where the legitimate needs of the Government can only be satisfied by a single source, the law does not require these needs to be compromised in order to obtain competition.

In its request for reconsideration, Boonton refers to a statement in the decision regarding the Navy's lack of time and resources to conduct testing that would be necessary for it to be able to develop a more general specification for signal generators, and states that "when a procuring agency cannot generate minimum specifications that meet their minimum needs, and are adequate for competition, they \* \* \* demonstrate a lack of reasonable basis for their actions \* \* \*." Boonton also argues that the specification must be restrictive of competition since in fact only Hewlett-Packard submitted a proposal in response to the solicitation.

We are not convinced that Navy's inability to draft a detailed performance specification adequate for competition demonstrates the lack of a reasonable basis for the brand name or equal specification which was used. The agency indicated that it could not draft detailed specifications because such a task would require extensive performance and environmental tests on each of the Navy's prime systems with which the generator is to be used, followed by the development of a combined specification which would reflect the minimum needs of all the prime systems, an undertaking for which time and resources are not available at this time. We have recognized the validity of an agency's restricting competition because it was not feasible to conduct testing necessary to remove the restriction. See Hoffman Electronics Corporation, 54 Comp. Gen. 1107 (1975), 75-1 CPD 395. Here, the record showed that the Navy was able to describe its minimum needs only by specifying the HP 8640B, since the manufacturers of some of the prime electronic systems have utilized that generator in the development and production of their systems and have recommended it as the only generator suitable for prime system support. We note that Navy's use of the brand name or equal purchase description, and the revisions to

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the list of salient characteristics, represented attempts to make the procurement as competitive as possible under the circumstances.

With respect to Boonton's argument that the solicitation was unduly restrictive of competition because only one offeror responded to it, we need only reiterate that the Government does not violate either the letter or the spirit of the competitive bidding statutes merely because only one firm can supply its needs, provided the specifications are reasonable and necessary for the purpose intended. 45 Comp. Gen. 365, 368 (1965).

Boonton also argues that the Navy did not "get a good buy on this procurement," and that it is defective for that reason also. Boonton suggests that the Navy would have received a better price had effective competition been realized. Although that may be true, the validity of the award is not affected because the Government had to pay a higher price in order to satisfy its minimum needs. In any event, it is the policy of the Government to procure items at fair and reasonable prices, and we assume the contracting officer determined that the Hewlett-Packard price met that criterion prior to award. See Armed Services Procurement Regulation (ASPR) § 3-801 (1976 ed.).

Our prior decision is affirmed.

*R. F. K. 114*  
Deputy Comptroller General  
of the United States